

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 813  
Appropriations

(Delegate G. Clagett, *et al.*)

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State Personnel - Employment Categories and Special Appointments

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This bill limits the types of positions that are considered to be special appointments or are otherwise classified as management or executive service positions within the State Personnel Management System. The bill also establishes three permanent employment categories for employees of the Maryland Department of Transportation.

The bill takes effect July 1, 2008.

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Fiscal Summary

**State Effect:** To the extent that more State employees are considered skilled or professional service, State agencies may experience increases in administrative workload to comply with hiring and firing specifications. It is assumed that any such increase could be handled with existing resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill repeals a provision that establishes as a special appointment a position that performs a significant policy role or provides direct support to a member of the executive service. The bill also repeals references to the following positions as they relate to an employee's special appointment, management or executive service, or at-will status:

- Department of Business and Economic Development employees hired after June 30, 1995;
- Division of Correction chaplains;
- Maryland Correctional Enterprises' positions;
- Patuxent Institution social workers and sociologists;
- Correctional Training Commission appointed employees;
- Maryland State Department of Education professional assistants;
- MSDE clerical assistants and nonprofessional personnel;
- Child Support Enforcement Administration demonstration site employees;
- Maryland Deposit Insurance Fund Corporation technical and professional employees;
- Maryland Health Care Commission staff hired after September 30, 1999;
- Health Services Cost Review Commission staff hired after September 30, 1999;
- State Board of Physicians staff hired after September 30, 1992;
- noncertified teachers employed by an institution managed by the Department of Juvenile Services;
- Maryland Insurance Administration professional and technical employees;
- Chief Mediator to the Commission of Labor and Industry;
- Commission of Labor and Industry safety inspectors and staff;
- Police Training Commission staff;
- Public Service Commission personal staff members;
- Central Collection Unit appointments; and
- Maryland Historical Trust positions.

The bill also codifies three permanent MDOT employment categories: • career service; • executive service; and • commission plan service.

**Current Law:** The State Personnel Management System covers Executive Branch employees, with the exception of those specifically excluded by State law. The system includes four classifications: • skilled service; • professional service; • management service; and • executive service. Skilled and professional service employees, which comprise the majority of the State workforce, are competitively selected and are subject to statutory employment protections. Management service positions involve direct oversight of personnel and financial resources. Executive service employees are generally political appointments at the highest levels of State government.

### *Special Appointments*

Within each of the classes of regular employees (skilled, professional, management, or executive service) is a special appointment designation. A position may be considered a special appointment if • appointed by the Governor or Board of Public Works; • assigned to the Governor's Office or Government House; • directly supporting a member of the executive service; or • otherwise specified by law. Personnel actions concerning nonpolitical special appointments must be made without regard to political affiliation, belief, or opinion; however, political special appointments may consider these factors.

### *At-will Employees*

Except for special appointments, employees in the skilled and professional services are competitively selected and subject to termination for cause. If terminated, State law establishes an appeal procedure for employees in these categories.

Employees in the management and executive services and special appointment employees serve at the pleasure of their appointing authority and may be terminated from employment at the discretion of the appointing authority. If terminated, employees in these categories may appeal to the head of the principal unit, whose decision is final.

### *Transportation Service*

The Transportation Service operates independent of the State Personnel Management System. Three categories of permanent employee are established in regulation:

- Career Service Employees: These positions are subject to a competitive review process. After a required probationary period, these employees may only be terminated for cause.
- Executive Service Employees: These positions are appointed; incumbents serve at the pleasure of the appointing authority.
- Commission Plan Employees: These positions are comparable to those in private industry; incumbents serve at the pleasure of the appointing authority. Compensation is based on a base salary plus commission.

**Background:** The Special Committee on State Employee Rights and Protections was established by resolution of the Legislative Policy Committee to examine termination of at-will employees in the State Personnel Management System. In its 2006 final report the committee found that, beginning in 2003, the Governor's Appointments Office had directed an effort to replace at-will State employees, taking action that was arbitrary and inconsistent with improving government. In other cases, separations were illegal, as they were based on political considerations. The committee also found that, under the direction of the Governor's Appointments Office, some employees were unreasonably barred from being considered for other State positions. In investigating these actions, the committee determined that portions of State law were ambiguous or inconsistent in establishing employee protections.

The committee's final report found that there were 6,847 at-will positions in the State Personnel Management System and MDOT personnel system. The report included

multiple recommendations for changes to the State's personnel systems, many of which were enacted in Chapter 592 of 2007, the State Employees' Rights and Protections Act. These recommendations included:

- clarifying that only a lawfully designated appointing authority may terminate State employment for an employee;
- increasing employment protections available to management service employees, such as prohibiting actions based on nonmerit factors and requiring the appointing authority to provide a reason for termination;
- determining which special appointments qualify as patronage positions and prohibiting certain political terminations; and
- creating a private right of action in State court for political firings.

Recommendations also included improving certain notification and reporting requirements, performing a study of at-will management service positions, and reforming retirement policies for at-will employees.

In accordance with Chapter 592, the Department of Legislative Services, with the assistance of DBM, MDOT, and State employee labor organizations, is reviewing State personnel law to determine the number of at-will employees, special appointments, and management service employees in the Executive Branch; the rationale for designating the majority of employees in an agency as at-will; and the possibility of extending merit system protections. Findings and recommendations will be reported to the General Assembly by December 1, 2008.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Human Resources, Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - February 18, 2008  
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Analysis by: Suzanne O. Potts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510